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**New Presbyterian Meets Old Priests: Conciliarism and Conscience in Samuel Rutherford's
*Free Disputation***

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New Presbyter Meets Old Priests: Conciliarism and Conscience in Samuel Rutherford's *Free Disputation*

1. Introduction

Samuel Rutherford, the leading Scottish Covenanter and Reformed theologian, is well known for the anti-tolerationist arguments he put forward in his 1649 *Free Disputation against Pretended Liberty of Conscience* – a provocative title which almost speaks for itself. In this he argued that rightly-grounded decisions of the Church take priority over individual liberty of conscience.¹ Yet in an earlier, more famous, work, the *Lex Rex* of 1644, Rutherford had defended passionately the rights of subjects to rebel against their lawful Prince in defence of, among other things, their liberty of conscience.² While we might be tempted to see in this a kind of volte-face, in fact it was nothing of the kind. Rather, as I shall argue, Rutherford's apparently contradictory stance on liberty of conscience makes perfect sense when we consider the profound debt of his political theology to late medieval and early modern Conciliarist currents of thought. Within the context of the great fifteenth-century Councils of Constance and Basel, Conciliarism urged the supreme authority of the Council over the Pope and laid an important basis for community sovereignty, covenantally-conditioned notions of rule and the rights of the individual. Refracted into the context of early modern Scottish Presbyterianism these same principles led Rutherford to articulate a high view of individual rights and consent while maintaining a strong stance on unity and uniformity.

The connection between Conciliarism and early modern politics is one that scholars have long been aware of. In 1900 John Neville Figgis famously referred to *Haec Sancta*, the 1415 decree of the Council of Constance which asserted the ultimate authority of the Church over the Pope, as 'probably the most revolutionary official document in the history of the world'.³ While subsequent historians have often blanched at such a remarkable claim, Figgis argued forcefully for the roots of early modern constitutionalism in late medieval Conciliarism. Of course, as both Francis Oakley and Cary Nederman have cautioned, it would be unwise to draw a direct line between the two.⁴ Yet as Oakley's own work has demonstrated, not to mention Quentin Skinner's magisterial *Foundations of Modern Political Thought*, the connections are both evident and pervasive.⁵ Moreover, going beyond Figgis, it has become clear that Conciliarism not only had a significant influence on the rise of constitutionalism, but that it also profoundly shaped the emergent discourse of radical politics. From the French Monarchomachs of the

sixteenth century to the English Puritans of the seventeenth century, Conciliarist influence is plain to see.⁶

Within a seventeenth-century Scottish context the influence of Conciliarism on politics and political theory might be expected to be especially potent. For Rutherford and his fellow Covenanters received Conciliarism not as a foreign import, as perhaps their English brethren did, but as a domestic product which they were eager to export. From the fifteenth century onwards Scots had played an important role in the international Conciliarist movement.⁷ In the early sixteenth century the Scotsman John Mair, in his day perhaps the most famous scholastic theologian at the University of Paris, together with his French pupil Jacques Almain, had provided important momentum for the revival of Conciliarism and its ongoing transformation into a constitutional theory of state. Through his later position as a Professor of Theology at St Andrews, Mair influenced a whole generation of Scottish Reformers, including John Knox, John Winram and George Buchanan. These not only thoroughly radicalised their teacher's Conciliarist critique of the contemporary Church but also combined it with a nascent, Reformed covenantal ideology ready for their seventeenth-century successors to draw on.⁸

Rutherford's own connection to Conciliarism has certainly not gone unnoticed, with both Coffey and Oakley drawing attention to it.⁹ In his ground-breaking *Lex Rex*, as well as his monumental ecclesiological works *The Due Right of Presbyteries* and *The Divine Right of Church-Government and Excommunication*, the names of Almain and Mair, as well as of fifteenth-century Conciliarists like Jean Gerson, Pierre d'Ailly and Nicholas of Cusa are readily apparent.¹⁰ Moreover, as I have argued elsewhere, the entire argument of the *Lex Rex* can only be fully understood within an explicitly Conciliarist framework.¹¹ Yet the connection between Rutherford's Conciliarism and his controversial discussion of conscience and toleration is one that has not been elucidated. For it is arguably not only the *Lex Rex*, with its stirring defence of individual rights and conscience, which breathes Conciliarism, but also the controversial *Free Disputation*, which Owen Chadwick pungently referred to as the 'ablest defence of persecution in the seventeenth century' but which some more recent scholars have seen as itself an important defence of Presbyterian rights.¹²

To see this may be to begin to challenge a widespread assumption that Conciliarism survived into early modernity only through shedding its embarrassing ecclesiological trappings. Rather, Rutherford's discussion shows how closely ecclesiology and politics remained entwined in the discourse of the mid-seventeenth century. As Timothy Stanton has argued, it was John Locke

who in his famous 1689 *Letter concerning Toleration* really cut the tie between ecclesiology and politics, and who did so quite explicitly in order to make room for toleration. Indeed, Locke's notion of the Church as a voluntary community is worlds-away from Rutherford's Conciliarist vision of a unified Church and state.¹³ In re-examining Rutherford's anti-tolerationism and its Conciliarist grounding we therefore gain a new perspective on the later toleration debate and its political and ecclesiological moorings. In what follows, I will therefore seek not only to explore Rutherford's notion of right and conscience, but also to place it in explicit dialogue with the mature Locke.

2. Natural Liberty and Natural Right

Rutherford's account of political society was shaped by a prevailing Augustinianism, which viewed political society as a remedy for sin.¹⁴ While he regarded domestic or familial structures as natural, he maintained that all polities beyond this required the consent of the community. In explaining this transition Rutherford drew on two very different narratives of the origin of government, innovatively seeking to fuse a discourse of natural liberty and a discourse of natural rights. Indeed, it is within the fruitful dialectic between liberty and rights that Rutherford begins to construct his distinctive account of political community. At the same time, the inherent tensions between these two accounts goes some way towards explaining the seeming contradictions between Rutherford's view of individual rights.

It is undoubtedly in his account of natural liberty that Rutherford comes closest to Locke and his famous theory of the social contract. It is unknown whether or not Locke knew Rutherford's work directly, although a definite proximity of thought has been detected between the two.¹⁵ Regardless of the precise connection, an affinity between the two is scarcely surprising, for Rutherford's account of natural liberty is itself entirely dependent on that of the sixteenth-century Spanish jurist Fernando Vázquez de Menchaca.¹⁶ As Annabel Brett has argued, Vázquez was at the beginning of an entirely new discourse of individual rights and liberty which germinated in the reflections of John Selden, Hugo Grotius and Thomas Hobbes and ultimately came to fruition in Locke himself.¹⁷

Drawing on Vázquez, Rutherford held that the origin of political communities was in people gathering together for the purpose of self-defence, appointing magistrates and establishing a penal law code. For humans living East of Eden, entering into political society thus required the sacrifice of an original state of liberty and the acceptance of a new and voluntary state of servitude. Since such subjection could hardly be natural in character, it required the active

consent of the individual.¹⁸ In this we may find an important analogy with the later Locke. For, like Rutherford, Locke sharply distinguishes the paternal and political and is insistent that the pre-political state of nature is essentially a realm of freedom.¹⁹ Indeed, Locke's teaching on the origins of government is precisely that men who are free by nature consent to leave the 'liberty of the state of nature' and place themselves under the authority of the community.²⁰ Likewise, his 'very strange doctrine' that 'in the state of Nature every one has the executive power of the law of Nature', amplified by his use of Cain as an example,²¹ clearly resonates with Rutherford's Vázquezian claim that the foundation of all political society is the principle that 'it is lawful to repel violence with violence'.²²

Despite all these affinities, however, there is a fundamental gulf between Rutherford and Locke, ultimately as wide as the gap between covenant and contract. To see this we need to be clearer about the difference between these two notions. While both covenant and contract introduced an important element of conditionality into political discourse they did this in quite different – and sometimes radically different – ways. In our context, a contract can be seen as a horizontal relationship between human parties which establishes in a legally-binding manner the rights that each party have and the nature of their relationship. By contrast, a covenant could be understood as either vertical – between God and humanity – or horizontal – between human parties – in character. Even when considered as purely human in character it was still often understood as conditioned by a prior divine covenant. Its binding authority was thus seen as divine and not only human in nature, with its transgression carrying correspondingly higher sanctions – even if these were not strictly legally admissible. In early modern discourse the transition from covenant to contract, is commonly seen in the wake of Skinner as involving a move from religious duty to political right, although this is arguably to make too sharp a distinction. Finally, covenant certainly involved a level of reciprocity – and of mutual self-binding – distinguishing it from a purely contractual account of rights.²³

For Locke the formation of political community involved the surrendering of the right to take the law of nature into one's own hands, which he evocatively describes as 'giving up' a right to the commonwealth.²⁴ By contrast, as John Ford and John Coffey rightly point out, Rutherford distances himself markedly from any such contractual or transactional understanding, in which a political community is formed through a transfer of rights from the people to the ruler.²⁵ As he explains:

Individuall persons in creating a magistrate, doth not properly surrender their right, which can be called a right; for they do but surrender their power of doing violence to these of their fellows in that same communitie; so as they shall not now have morall power to do injuries without punishment; and this is not right or libertie properly, but servitude: for a power to do violence and injuries, is not liberty, but servitude and bondage.²⁶

Thus, what is a right for Locke pertaining to the state of nature, is for Rutherford simply a marker of human sinfulness. Likewise, what is for Locke a contractual relation, and indeed the heart of the social contract itself, is for Rutherford better understood in covenantal terms, as becomes evident throughout the *Lex Rex*.

Responding to Richard Tuck, Oliver O'Donovan has reminded us of the dangers of reading modern connotations into early modern notions of 'right'. As O'Donovan cautions, the difference in view here is one between 'earlier' notions of 'right' (*ius*) as objective and relational and 'later' conceptions of 'rights' as subjective and individualistic – conceptions which had their apogee in the Enlightenment but are generally taken as having their origins in late medieval thought.²⁷ Thus despite all his pronounced emphasis on the natural liberty of the individual, Rutherford is clear that there can be no right which exists outside the objective framework of law.²⁸ In this he echoes an older, scholastic, tradition of natural rights, prominent in the French Conciliarists Jean Gerson and Jacques Almain, which saw right as a power, or faculty, conditioned by divine law.²⁹

Following Almain, Rutherford therefore seeks to fuse the objective right of the Thomist tradition with the discourse of subjective rights present in Ockham and Gerson. Likewise, he also seeks to integrate the rights of the individual with the rights of the community. While the people may decide to confer on the magistrate the power of the sword for their own well-being, in doing so they no means cede their own right of self-preservation, which is indeed inalienable.³⁰ The prince therefore does not rule absolutely over his people but only conditionally.

3. Covenant and the Right of Resistance

For Rutherford this notion became enshrined in the covenant made before God between the King and his people at his coronation and renewed with each successive monarch. From the Bible he found clear evidence of 'an oath betwixt the King and his people, laying on, by reciprocation of bands, mutuall civill obligation upon the King to the people, and the people to

the King'. Such a covenant, he held, is made between the King and people in which 'both bind themselves before God to each other'. In making it the King binds himself to uphold the cause of true religion and to govern his subjects justly, while in turn the people bind themselves to all due obedience to their sovereign. Following the conventional understanding of a covenant Rutherford held that it both placed each party under an obligation and gave them a right (*ius*) over the other in case of their defaulting. Against his Royalist opponents, he clearly saw this as not only a two-way covenant but also one that was properly coercive, so that the people had both the power and the right to punish its default, and utterly binding in the sight of God.³¹ In this, as we shall see below, we also find the seeds of his resistance theory.

Before we turn to the more extreme implications of this covenantal model, however, it is important to realise how it functions in ordinary political life to limit the powers of the King and constrain his actions. Rutherford's conviction is that the King holds his office in trust and must always act according to the Word of God and for the well-being of the people – *salus populi suprema lex*.³² He therefore does not flinch from calling the King the 'servant of the people'³³ or from arguing that the King is a steward of his kingdom ruling it for the good of his people.³⁴ In support of this view Rutherford cites Vázquez and others of the 'learnedst jurists', but he could just as easily have cited Gerson, Almain or Mair.³⁵ Rutherford also recognised the parliamentary estates as an important safeguard preventing the King from trespassing against the rights of his subjects, and he held the King to be bound in covenant to parliament.³⁶

Towards the end of *Lex Rex* we find a revealing discussion of the relation between King and Parliament. According to what he calls the "fountaine-power" Rutherford holds that the "King is subordinate to the Parliament, and not coordinate; for the constituent is above that which is constituted". According to the executive power the two together make a "total and compleat soveraigne power". Yet Rutherford insists that "royall power parliamentarie without the Parliament is null, because it is essentially but a part of the Parliament, and can work nothing separated from the Parliament". In this sense, royal power is seen to be a "always a creature of the communitie" from whom it flows to the King through the channel of the representative estates.³⁷ Rutherford's language of 'fountain power' draws on an important trope of late medieval and Renaissance politics,³⁸ but it comes particularly close to the view of Mair that the 'supreme inabrogable fontal power [of sovereignty] is in the free people'.³⁹ In practice, this Conciliarist view can be seen to lead to an important division of labour between the King and the estates. While they governed conjunctly the power for execution of laws lay more in the King, while the legislative power resided more in the estates – where it had its fountain origin.

Just as the King bound himself to the estates for matters of the material common good, so also he bound himself to both the estates and the Kirk in matters of the spiritual common good. In both the *Lex Rex* and the *Due Right of Presbyteries* Rutherford therefore cites the Conciliarists and jurists quite explicitly in support of his doctrine of ecclesiastical government, with its intricate system of checks and balances. Guiding Rutherford's thought are two key principles. The first is that only Christ is to be considered the Head of the Church. Against both Catholics and Anglican Royalists he held that 'no mortall man hath shoulders for so glorious a head', for this headship is 'proper and incommunicably reciprocally' with Christ as divine mediator.⁴⁰ The second is that Rutherford held that all offices in the Church derive immediately from Christ but are given 'mediately and conditionally by the intervening mediation of the ruling and ministerial Church'.⁴¹ Here, it should be pointed out, we have a clear analogue of the institution of Kings, which comes both immediately from God and through human mediation.⁴² At the same time, however, there is also an important disanalogy. Following Almain, who was always careful to sharply distinguish the natural institution of the state from the supernatural institution of the Church,⁴³ Rutherford differentiates between the civil power, which is natural and has its fountain origin in the community, and the ecclesiastical power, which is supernatural and grounded in Christ. Sounding a faintly ominous note in the midst of the seventeenth century Church-state struggle, he is also emphatic that 'Christ is not ruled by our lawes'.⁴⁴

For Rutherford therefore the Church is ruled by its officers appointed immediately by Christ, but through the mediation of its visible institutions. Indeed, with Gerson and Almain, Rutherford insisted that the pattern of the Church's government was by councils or synods. He strenuously denied that this was simply a popish innovation and defended to the hilt the fundamentally Christian character of the conciliar ideal.⁴⁵ However, the situation was complicated for Rutherford, as indeed it had been for his late medieval predecessors, by the vexed question of the King's relation to the Church. Rutherford's solution, much like Almain, was to appeal again to the vital distinction between the natural and supernatural order, integrating this into his wider theology of dominion. The King takes up the sword to naturally defend the Church and has the power to command synods to convene. Although obliged to execute the Church's command in synods, Rutherford is emphatic that this does not make him the servant of the Church.⁴⁶ Yet this lordly power of the King is immediately balanced by the ministerial and supernatural power of the Church. While the Church has no coercive power over the King it certainly has ministerial power to rebuke him and resist his commands if they are to the detriment of the Church. Moreover, while in civil legislation the King and the estates

are in some way conjunct, the King plays no role in ecclesiastical legislation. In the *Due Right* Rutherford therefore attacks in no uncertain terms those like John Wemyss who argued that Church canons derive all their authority from the King, as well as those who took the more moderate position that they derive from King and Church conjunct. This, he says, is a confounding of the two kingdoms and a confusion of the spiritual with the temporal.⁴⁷

Yet while it is easy to read Rutherford here simply as a classic defender of the celebrated Protestant ‘Two Kingdoms’ doctrine, it is notable that he draws on Gerson, as well as Protestant authorities, for his view that civil and ecclesiastical law are both ‘perfect in their own kind’. Moreover, Rutherford goes against the grain in affirming a simultaneous mutual subordination and mutual supremacy of Church and King. In terms of Church discipline the King is under the “sceptre of the King of saints” and must submit to his ministers in the Church. However, in terms of coercive power to enforce the Church’s decrees the King acting in Parliament is supreme.⁴⁸ In arguing this he draws explicitly on the Scots conciliarist John Mair. For Rutherford warmly applauds his maxim concerning civil and ecclesiastical government ‘that they are not subordinate, that is, not one of them is above another’, even while denying his caveat that ‘neither of the two hath a commandement over another’.⁴⁹

For Rutherford, the right of resistance was founded in covenant, and backed-up by the estates’ coercive jurisdiction over the King. For his opponent John Maxwell this provided clear evidence that he and his fellow Protestant resistance theorists were simply borrowing from the principles of the Jesuits.⁵⁰ Rutherford, however, utterly denied this charge, and in so doing helpfully defined for us the contours of his resistance theory. Firstly, Rutherford is clear that the doctrine that all civil power is ‘radically and originally seated in the communitie’ is not unique to the Jesuits but can be found in any Catholic and Protestant jurist worth their salt. It is at root, he suggests, a Conciliarist principle as well as a biblical one. Indeed, Rutherford suggests that the Jesuits themselves, in complete contrast to the Conciliarists, abuse it by using it as a means of smuggling in their own claims to papal supremacy over Kings.⁵¹ Secondly, he is emphatic that the right of resistance is grounded entirely in self-preservation, whether this be natural or spiritual in nature. It is this that is ‘sinlesse natures birth-right’ meaning that in the case of tyranny the people have the right to resume government and even to depose the King.⁵² As he pungently put it, ‘people cannot divest themselves of defensive wars anymore than they can of nature’.⁵³ However, thirdly, Rutherford holds with the Conciliarists that such action is only to be taken in cases of extreme necessity. Fourthly, he also insists, like Mair, that resistance cannot be a private action but that in order to be legitimate it must be authorised by

the estates.⁵⁴ Finally, Rutherford is emphatic that in all resistance, as far as possible, the person of the King should be respected. While violence remains necessary just as much in a defensive and an offensive war, the killing of the King is to be regarded as unlawful. There remains an important sense for Rutherford in which the King's person, as endowed with his office immediately from God, is sacred.⁵⁵

In light of this, Rutherford's resistance theory appears considerably less radical than it has sometimes been portrayed. Certainly in denying private action and assassination he stops far short of the French monarchomach school. Likewise in his view that the people have the power, in cases of necessity, to depose the King, he echoes Mair and the Conciliarists.⁵⁶ Yet if Rutherford was confident that the main outlines of his resistance theory were such that they could be upheld not only by fiery spirits like Buchanan and Knox but even by conservatives like Mair or convinced Royalists like Ninian Winzet, the defence of it in practice was quite another matter. In the preface to *Lex Rex* Rutherford sets out in no uncertain terms his reasons for writing the treatise. As he says;

He considered that popery and defection had made a large step in Britain, and that arbitrary government had over-swelled all banks of law, that it was now at the highest float, and that this sea approaching the farthest border of fancied absoluteness, was at the score of ebbing: and the naked truth is, prelates, a wild and pushing cattle to the lambs and flock of Christ, had made a hideous noyse, the wheelles of their chariot did run an equal pace with the blood-thirsty mind of the daughter of Babel.⁵⁷

What Rutherford opposed therefore can be summed up in two words: absoluteness and prelacy. It was axiomatic to him that 'the estates of Scotland have power to punish the King, if he labour to subvert religion and lawes'.⁵⁸

For Rutherford the witness of history made clear that the Stewart dynasty had long been prone to absolute ambitions. In his *Lex Rex* he is emphatic that the King of Scotland does not rule his kingdom as an absolute prince. Against James I's famous work *Basilikon Doron*, which sought to vindicate his own claims to divine right, he drew on the Scottish chroniclers and political theorists John of Fordun, Hector Boece, John Mair and George Buchanan to demonstrate the ultimate supremacy of the estates.⁵⁹ In proroguing parliament and instituting the personal rule, he saw Charles I as going beyond even his father's theoretical absolutism.⁶⁰ Where Charles I had gone utterly beyond the pale, however, was in attempting to impose the new prayer book and the episcopal structure of government on the Church of Scotland, as well as to forcibly

suppress the National Covenant in alliance with Catholic powers. Rutherford clearly saw the National Covenant as obliging all who signed it to defend the true religion with the sword. As he put it – invoking the more radical conciliar logic – ‘the reformation of religion is a personall act that belongeth to all, even to any one private person according to his place’.⁶¹ The Scottish covenanting wars were not to be seen as an act of rebellion against a lawful King, but as a defence of the historic constitution and Protestant religion of Britain against domestic tyranny and foreign invasion.

4. Real and Pretended Liberty of Conscience

While couched above all in Scriptural and Conciliarist terms, the *Lex Rex* also made a number of important appeals to conscience. Thus, Rutherford claims that the conscience of the people can act as a court above the King and that the King’s pleasure cannot be the rule of national conscience.⁶² Referencing the dramatic events of 1638, which heralded the National Covenant, he also argued that the Confession – meaning the Scots Confession of 1560 – obliges resistance against a King who imposed a service book against the conscience of his people.⁶³

Given this stirring defence of the liberty of conscience, there seems, at least at first sight, to be a considerable irony in the fact that Rutherford’s anti-tolerationist arguments are also developed within a strongly Conciliarist framework. For the political notion of covenant or contract, with its associated notions of individual right and consent, has often been understood as not only paving the way for a constitutional framework of government but also as laying the foundation for Enlightenment notions of liberty of conscience and toleration. Locke, of course, stands as the paradigmatic example of this with his famous *Letter concerning Toleration*. That Rutherford did not take such a path was due not only to the tension between objective and subjective right that we have already identified in his thought, but also, as we will see, to his very different understanding of conscience.⁶⁴ Moreover, Rutherford wrote his *Free Disputation* in 1649 in the midst of a bewilderingly complex situation in Church and society, both on a domestic and international front, and at a time of increasing polarisation of positions.

Appointed Professor of Divinity at St Andrews by a Covenanter regime who brooked no opposition to their rule – and who had indeed at the beginning of their reign forcefully denied an appeal to conscience by the Aberdeen Doctors concerning the matter of non-subscription of the Covenant – Rutherford was writing in justification of the Scottish Presbyterian position against increasing pleas for toleration emerging from moderate Presbyterians and Independents in England and New England, and which in Oliver Cromwell were soon to find an important

champion.⁶⁵ Disappointed already in the hopes of a unified Presbyterian Church across the British Isles, he wrote to defend the ideal of a national Church in Scotland. Having been a member of the Westminster Assembly, which in 1647 had presented a new Confession of faith and liturgy, Rutherford was particularly concerned to defend these as divine instruments for enforcing unity and uniformity.⁶⁶

Despite the defeat of the Royalist party and the exile of the Aberdeen Doctors, some of whom he had charged with heresy at the Aberdeen Assembly of 1640, Rutherford also still remained deeply concerned about the threat of Arminianism – an ever present threat to his mind.⁶⁷ The *Free Disputation* is therefore not only aimed against those like John Goodwin or John Dury who argued for breadth or liberty of conscience, but also, and perhaps especially, against the Arminian and Remonstrant party in the Netherlands who argued for liberty of conscience as a means of avoiding the strictures of the Synod of Dort. With an eye to both the domestic and international context, Rutherford was therefore particularly concerned to defend the right of the godly magistrate to suppress and punish heresy.⁶⁸ Rutherford also saw the notion of the sovereignty of conscience, propounded by his opponents, as a doorway to scepticism and libertinism – one which he desired, of course, to keep firmly shut. Without denying the claim of conscience, he thus firmly upheld the sovereignty of divine law as the supreme arbiter of all rights in Church and society.⁶⁹

Rutherford's own exposition of the nature of conscience begins from a biblical standpoint: the Apostle Paul's statement before Governor Festus of a 'conscience void of offence toward God, and toward man' – a definition which already suggests an intimate connection between conscience and divine law. According to Rutherford, conscience in the Bible stands for the heart and thus signifies the mind, understanding and will.⁷⁰ This leads him to elaborate his understanding of conscience in dialogue with the faculty psychology of the Middle Ages.⁷¹ According to Rutherford conscience is to be understood as 'a power of the practically understanding according to which the man is obliged and directed to give judgement of himselfe, that is of his state and condition, and of all his actions, inclinations, thoughts and words'.⁷² Taking sides in a scholastic controversy he holds that conscience is a power of the soul and not an act or even a habit. Against those scholastics who wish to view conscience as an inclination of the will, or of intellect and will combined, Rutherford argues for its seat in the practical intellect.⁷³ In this he comes close to both Aquinas and Scotus.⁷⁴

While Rutherford argued for conscience as an intellective power of the soul he did not thereby intend to separate it from either a habitual framework of action or from the will and the affections of the soul. In fact, he views conscience as a discursive faculty, which through the will, is able to command the whole soul. He thus utterly rejects a view of conscience which detaches it from principles of action.⁷⁵ In line with his all-important distinction between a right and erring conscience he also distinguishes between conscience viewed abstractly as a power and conscience as it becomes embedded habitually in the human – or indeed angelic – soul. Indeed, for Rutherford, following a broad scholastic consensus, the operation of conscience is syllogistic. Conscience thus formulates a major proposition drawing on synderesis as the habitual knowledge of the principles of natural law inscribed in every human soul. As an intellective power conscience acts as a witness proposing a minor proposition concerning the individual action under investigation. Finally, conscience combines these together to come to a concluding judgement or decision on the case. Blurring somewhat his earlier distinction between power, act and habit, Rutherford argues ‘it is but one and the same conscience acting all the three, the acts of Law, a Witsnesse, a Judge’.⁷⁶ Significantly, it was just such a position that Locke was seeking to break away from, in his emphatic claim that ‘Conscience is the judg not y^e law’.⁷⁷

There is, however, a marked tension, even ambiguity, in Rutherford’s account of conscience, which is shaped by his Augustinian anthropology and his prevailing Anti-Arminianism. On the one hand Rutherford can speak of conscience in terms which echo even the most enthusiastic of its extollers. It is thus a ‘christall globe of reason’ and the ‘beame’ or ‘sunne’ of the soul. It is a divine power and ‘something of God’, even a ‘domestick little God’ and a ‘keeper sent from heaven’.⁷⁸ On the other hand Rutherford attacks fiercely those who would ‘deify’ the conscience, or argue for conscience’s ‘royal prerogative’.⁷⁹ He also denies, against the Arminians, that conscience is an indifferent or impartial judge, attacking his opponents’ assumption concerning its fundamental innocence.⁸⁰ He would have surely found Locke’s view that the consequences of the Fall are irrelevant to the politics of conscience utterly unintelligible.⁸¹

If this seems a contradiction, the resolution comes in Rutherford’s account of the relation between conscience, grace, and the law of God. For he is adamant that the Fall has corrupted the habitual knowledge of the natural law that humans originally had and thus polluted the act of conscience. The letters of the divine law are still inscribed on the soul but the ink has now become faded. Conscience still remains a bright light but its beams have become obscured by

clouds of sin.⁸² Conscience, like every other faculty of the human soul, must therefore be renewed through the grace of the Holy Spirit. Since conscience is fallible it must therefore always be held up to the divine light of revelation. Indeed, what Rutherford opposes is not the elevation of conscience *per se*, but the claim of his opponents, whether implicit or explicit, that conscience can function as a kind of parallel witness to Scripture, or – much worse – that it can be used to judge the interpretation of Scripture. In this sense he can argue that conscience is both an ‘under-witnesser and an observer with God’ and that it is a ‘blind and dimme beholder’ in comparison with him.⁸³ At the same time, it is also clear to Rutherford that only a Christian can truly make the claim of having a good conscience before God, since only the Christian seeks to subordinate their conscience to the Law of God as revealed in Scripture.⁸⁴

Importantly, the *Free Disputation* combines this scriptural claim with a Conciliarist argument for the authority of the Church in Councils. This is directed against the *Apology* of the Remonstrants which asserted the great violence done to conscience by Synods of the Church, clearly with Dort in mind.⁸⁵ Against this, Rutherford defends the right of Synods to coercion, providing that their decisions are in accordance with the Word of God. Drawing on the Reformation understanding of the fallibility of the Church, the Arminians argued for the right of individual consciences to judge propositions of Scripture. Without in any way denying their assumption, Rutherford responded that ‘a fallible Church may determine infallible points’. While here he does depart from the medieval Conciliarist thesis of an infallible Church, his claim that the decision of the Church in lawful synods is the decision of the Holy Spirit speaking in the Word of God carries more than an echo of *Haec Sancta* and the Council of Constance’s famous self-assertion that it was ‘legitimately assembled in the Holy Spirit’.⁸⁶ Indeed, Rutherford can hold that when the Church commands obedience to its decrees it is Christ himself who is doing so, through the ministerial office of the elders of the Church.⁸⁷

The principles of Scripture and Church in Council are those which Rutherford regards as sovereign over conscience and which effectively govern his discussion of all the individual cases discussed in the *Free Disputation*. As conscience conforms itself to those principles it can be viewed as a divine voice in the soul, as it departs from them it becomes erring and its claims only those of a ‘pretended liberty of conscience’. To see what this means it will be helpful to briefly survey two case-studies discussed by Rutherford which were key issues of contemporary concern: the first concerns the issue of fundamentals and the second the question of compulsion.

In the war-torn and confessionally-divided Europe of the seventeenth century the quest to define the fundamentals of the Christian faith became increasingly important. In particular, the devastating events of the Thirty Years' War, the hostilities of which had only come to an end a year before Rutherford penned the *Free Disputation*, had prompted renewed efforts to unite Reformed and Lutherans in order to establish a united Protestant front against the Catholic Habsburgs. Closer to home, concerns over the fissuring of the Protestant Church, and the confessional violence of the Civil Wars, were leading to attempts to delineate the fundamentals of the Christian faith in as inclusive a way as possible.⁸⁸ For example, just a few years after Rutherford's *Free Disputation*, Richard Baxter would launch the Association movement which sought to unite Presbyterians, Independents and Episcopalians around a minimalist confession grounded on the believer's baptismal covenant with the Trinity.⁸⁹

Intimately connected to both these movements was the Scottish irenicist and ecumenicist John Dury, a fellow member of the Westminster Assembly with Rutherford and a former associate of the Aberdeen Doctors.⁹⁰ Like Baxter, with whom he was to be closely connected, Dury sought to define the broadest possible terms of subscription in an attempt to unify the divided Church.⁹¹ Interestingly, Rutherford did not attack Dury directly. It may well be that he recognised that Dury's political star was in the ascendant, but it also seems that he had a real respect for him. Indeed, in the *Free Disputation* he not only cited with approbation Dury's tripartite division of the necessary points of the Christian religion, but also praised the efforts of the Leipzig Conference of 1631, which Dury had been closely involved in, to promote unity between Reformed and Lutherans.⁹² Moreover, like Rutherford, Dury was a firm believer in the Conciliar government of the Church.⁹³

Yet where Dury saw Church Councils as a means of ensuring cross-denominational unity through the drawing up of a common confession, Rutherford's own Conciliarist principles led him to a diametrically opposite conclusion. He thus opposed the view of the irenic John Davenant, which was an inspiration for Dury, that the Protestant Church should try and draw up a general confession which both Reformed and Lutherans could agree to. According to Rutherford such general confessions are simply a 'daubing of the matter with untempered mortar'. They are thus deceptive and a kind of 'patching up' of truth and falsehood. For inevitably both sides will interpret a general confession according to their own meaning so 'now the contrary senses of this confession makes them now not one generall, but two particular, distinct, and contradictory faiths'⁹⁴ – something obviously repugnant to true conscience.

In similar vein, Rutherford also attacked the broader attempt, sponsored by Dury as well as others like Goodwin, to distinguish between the fundamentals of the Christian faith which must be held by all and the non-fundamental points in which there could be liberty of conscience. While Dury and Goodwin believed it to be a relatively easy matter to identify such fundamentals, Rutherford held the contrary view. As he put it:

To determine what is fundamentall, what not, and the number of fundamentall points, and the least measure of the knowledge of fundamentals, in which the essence of saving faith may consist, or the simple want of the knowledge of which fundamentalls, is inconsistent with saving faith *in minimo quod non*, is more than Magistrate or Church can well know. Sure it borders with one of Gods secrets, touching the finall state of salvation, or damnation, of particular men.⁹⁵

Rutherford also had a strong scepticism about the very meaning of the distinction between fundamentals and non-fundamentals. For him it was the synods of the Church, through Scripture, which had the authority to make confessions of faith – just as had happened at the Westminster Assembly. While these confessions did not presume to determine the fundamentals precisely, they could be taken as the authoritative voice of Christ through Scripture. Individual conscience had no right to dissent from this, and if it did so, it became by definition erring conscience.⁹⁶

Given Rutherford's view of the supreme authority of the Church in Synod, the question remained of who it was that should enforce the decision of the Church. According to Rutherford, this was the duty of both the civil and ecclesiastical authorities. Indeed, he argued that both can be considered as actually 'compulsory of conscience', providing that conscience is understood in terms of external liberty of action and not internal liberty to think, will, judge etc. – which he held that no one, including even God himself, could compel.⁹⁷ Here, we actually may detect an important similarity not only with Cromwell, who described religious belief as 'things of the minde',⁹⁸ but also with Locke's famous definition of religion as the 'inward and full perswasion of the mind'.⁹⁹ Yet, for Rutherford there could be no such sharp distinction between inward and outward. He thus insisted that even *adiaphora* came under the legislative purview of the magistrate – an issue over which he had already clashed bitterly on with the Aberdeen Doctors.¹⁰⁰ For him – in direct contradiction to Cromwell and Locke – the 'conscience of things indifferent, is never indifferent'.¹⁰¹

For Rutherford, the upholding of liberty of conscience against the unity of the Church was at root a Donatist principle. It is no surprise then that he should turn to both Augustine and Lactantius in defining his own view of compulsion. Following Lactantius, Rutherford was adamant that ‘religion cannot be compelled’¹⁰² Nevertheless, he also viewed it to be a false inference, which Goodwin and others had clearly drawn, which then denied coercive power to the magistrate over heretics and false teachers. Rather, Rutherford held that magistrates were ‘nursing fathers’ of the Church and that it was their duty to protect both it and its members from spiritual harm – a tenet which Locke later worked so hard to demolish in his *Letter concerning Toleration*.¹⁰³ Indeed, where Locke held to an absolute distinction of civil and ecclesiastical concerns – famously going so far as to say that ‘civil government relates only to Mens Civil Interests ... and hath nothing to do with the World to come’¹⁰⁴ – for Rutherford they were absolutely inseparable. From Lactantius, he thus argued that the magistrate’s sword is no means of God to force positively to external worship but is a means negatively to punish false worship. In this sense, the magistrate does not command obedience but punishes omission.¹⁰⁵

While this might seem to us – and certainly did to Locke¹⁰⁶ – like a somewhat empty distinction, it was vitally important for Rutherford. At the very least it served to distinguish the Christian community, within which the magistrate could enforce conscience, from the non-Christian community in which there could be no compulsion in religion. However, within Scotland at least, such a distinction would have been of little, if any, comfort for Rutherford’s opponents, as the Covenanter and Presbyterian ideal viewed Church and nation as coextensive – precisely the kind of mono-confessional notion which both Cromwell and Locke sought to dismantle.¹⁰⁷ Indeed, Rutherford maintained that through baptism all Scots had entered into this covenant and were therefore obliged by conscience to submit themselves to the ruling of the national Church. As in the *Lex Rex*, in order to justify this he would also likely appeal to the Conciliarist notion of tacit consent, in which individual consent became sublimated into the synodical structures of authority and the objective consent of the whole community.¹⁰⁸

5. Conclusion

Much more work is needed to fully excavate Rutherford’s anti-tolerationist views, which we have seen, perhaps somewhat surprisingly, to be intimately linked to a carefully-crafted understanding of rights and conscience. For Rutherford, there seems to be a real sense in which toleration actually subverted true liberty of conscience and erected in its place a pretended

liberty of conscience. For him, this deifying of conscience, making it a judge over scriptural and ecclesiastical matters was nothing less than a form of idolatry.¹⁰⁹ Of course there were many Christians at the time who vehemently disagreed with his anti-tolerationism, but we should at least understand Rutherford's position as a way of holding together Church and society at a fraught time when centrifugal pressures were threatening to blow them violently apart.¹¹⁰

We should also be clear in seeing in Rutherford's views the continuation of the late medieval Conciliarist tradition, with all of its high ideals and tragic ambiguities. While he denounced 'papist tyranny of conscience' in the *Free Disputation*, as well as the 'lawless decrees of Councils and Popes',¹¹¹ what he opposed was really the non-scriptural nature of their decisions and not the Conciliarist basis on which they were upheld. Likewise, the manner in which Rutherford's concern for unity ultimately trumped his concern for actual consent or liberty of conscience, was in many ways a replaying of fifteenth-century controversies. To see this, we need only recall the way in which Hus' appeal to Scripture and conscience at the Council of Constance was ultimately received. Like Gerson and other Conciliarists, Rutherford was both animated by an anti-Donatist spirit and willing to resort to the sword to defend the unity of the Church. Not for nothing did John Milton famously say that 'new presbyter is but old priest writ large'.¹¹²

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¹ See, for example, Rutherford, *Free Disputation*, 24-7.

² Rutherford, *Lex Rex*, 205-6, 442.

³ Figgis, *Studies of Political Thought*, 31.

⁴ For discussion of this see Oakley, “‘Anxieties of Influence’”, 60-110 and Nederman, *Lineages of European Political Thought*, 3-62.

⁵ Oakley, ‘On the Road from Constance to 1688’, 1-31; “‘Anxieties of Influence’”, 93-110; Skinner, *Foundations*, 113-34. Skinner strongly prefers to speak of this in terms of background rather than influence. Oakley, “‘Anxieties of Influence’”, marks an important response to Skinner.

⁶ See, for example, Oakley, ‘Almain and Major’, 684-5 and “‘Anxieties of Influence’”, 84-5.

⁷ For Conciliarism in fifteenth-century Scotland see Burns, *Scottish Churchmen*; ‘The Conciliarist Tradition’, 89-104; and *True Law*, 19-92

⁸ For a helpful overview of Mair’s Conciliarism see Oakley, *Conciliarist Tradition*, 112-40. For Mair’s subsequent influence see Oakley, ‘On the Road from Constance to 1688’, 1-31. Dawson, *Scotland Re-Formed*), 223 notes the affinity of Scottish Reformed ecclesiology with Conciliarism.

⁹ Coffey, *Politics*, 74; Oakley, ‘Almain and Major’, 685.

¹⁰ Rutherford, *Due Right*, 45, 203; *Divine Right*, 123, 203, 205-6, 596.

¹¹ Burton, ‘Scholastic and Conciliar Roots’.

¹² Chadwick, *The Reformation*, 403 cited from Gribben, ‘Rutherford and Liberty of Conscience’, 356 n. 8. For a radically opposing view see de Freitas and Raath, ‘Rutherford and the Protection of Religious Freedom’, 231-48.

¹³ Stanton, ‘Natural Law’, 35-57.

¹⁴ The material in section 2 draws on and develops part of the argument of Burton, ‘The Scholastic and Conciliar Roots of Samuel Rutherford’s Political Philosophy’.

¹⁵ Coffey, *Politics*, 12 notes this trend but rightly points out that Locke did not cite Rutherford or own his works. However, it is not impossible this was due to the political odium surrounding Rutherford in the post-Restoration context.

¹⁶ Rutherford, *Lex Rex*, 2-3; cf. Vázquez de Menchaca, *Controversarium*, l. 1 c. 41 n. 28-9.

¹⁷ Brett, *Liberty, Right and Nature*, 165-204; cf. Sievers, *Civil Society*, 36-7.

¹⁸ Rutherford, *Lex Rex*, 3-4.

¹⁹ Rutherford, *Lex Rex*, 2-4; Locke, *Two Treatises*, 2.1.2; 2.7.84.

²⁰ Locke, *Two Treatises*, 2.8.95-122.

²¹ Locke, *Two Treatises*, 2.2.5-11.

²² Rutherford, *Lex Rex*, 4, 92; cf. Hobbes, *Leviathan*, 60-4. Nevertheless, Ford, ‘*Lex Rex iusto posita*’, 276-7 is right to point to a disanalogy as well.

²³ See, for example, Oakley, *Mortgage of the Past*, 150 and van Gelderen, “‘So meerly humane’”, 151.

²⁴ Locke, *Two Treatises*, 2.7.87-9; cf. Waldron, ‘John Locke’, 3-28.

²⁵ Ford, ‘*Lex Rex iusto posita*’, 275-6; Coffey, *Politics*, 161.

²⁶ Rutherford, *Lex Rex*, 44.

²⁷ O’Donovan, ‘The Justice of Assignment’, 167-207. O’Donovan is responding to Tuck, *Natural Rights Theories* among other works.

²⁸ Rutherford, *Lex Rex*, 397-8.

²⁹ Gerson, *De Vita Spirituali Animae*, in *Oeuvres Complètes*, III.141; Almain, *Aurea*, fo. 72. Brett, *Liberty Right and Nature*, 81-7, 120-22 identifies Gerson and Almain as both belonging to the tradition of treating right as a faculty conditioned by natural law and right reason.

³⁰ Rutherford, *Lex Rex*, 226-7, 363, 417; cf. Brett, *Liberty, Right and Nature*, 117-22.

³¹ Rutherford, *Lex Rex*, 96-103.

³² Rutherford, *Lex Rex*, 124, 218.

³³ Rutherford, *Lex Rex*, 126.

³⁴ Rutherford, *Lex Rex*, 155-6.

³⁵ See, for example, Almain, ‘Book’, 169-70.

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- ³⁶ Rutherford, *Lex Rex*, 192.
- ³⁷ Rutherford, *Lex Rex*, 377.
- ³⁸ For discussion of ‘fountain power’ in its late medieval political context see Black, *Monarchy and Community*, 57-67.
- ³⁹ Mair, *In Matthaeum*, 71^{r-v}; cf. Burton, ‘Scholastic and Conciliar Roots’.
- ⁴⁰ Rutherford, *Lex Rex*, 432-3.
- ⁴¹ Rutherford, *Due Right*, 7.
- ⁴² Rutherford, *Lex Rex*, 5.
- ⁴³ Almain, ‘Book’, 139.
- ⁴⁴ Rutherford, *Due Right*, 20-1.
- ⁴⁵ Rutherford, *Due Right*, 335-82.
- ⁴⁶ Rutherford, *Lex Rex*, 432.
- ⁴⁷ Rutherford, *Due Right*, 423. This is from the second series of pagination.
- ⁴⁸ Rutherford, *Due Right*, 400. This is from the second series of pagination.
- ⁴⁹ Rutherford, *Due Right*, 400; cf. Mair, *Commentarium*, 4 d. 24 q. 3.
- ⁵⁰ John Maxwell, *Sacro-Sancta Regum Majestas*, 16-18.
- ⁵¹ Rutherford, *Lex Rex*, 413.
- ⁵² Rutherford, *Lex Rex*, 417.
- ⁵³ Rutherford, *Lex Rex*, 422.
- ⁵⁴ Burns, *True Law*, 69-70.
- ⁵⁵ Rutherford, *Lex Rex*, 273.
- ⁵⁶ See, for example, Mair, ‘Disputation’, 292.
- ⁵⁷ Rutherford, *Lex Rex*, ‘Preface’.
- ⁵⁸ Rutherford, *Lex Rex*, 428.
- ⁵⁹ Rutherford, *Lex Rex*, 448-9.
- ⁶⁰ Rutherford, *Lex Rex*, 264-5.
- ⁶¹ Rutherford, *Lex Rex*, ‘Preface’.
- ⁶² Rutherford, *Lex Rex*, 111, 160, 169, 174, 202, 205-6, 253.
- ⁶³ Rutherford, *Lex Rex*, 442.
- ⁶⁴ Stanton, ‘Natural Law’, 40-8 identifies Locke’s reworking of the notion of conscience as key to his defence of toleration.
- ⁶⁵ Coffey, ‘Puritanism and Liberty Revisited’, 961-85 discusses the complexities of this situation, pointing out that from one perspective this was only an argument for limited toleration.
- ⁶⁶ For the context of the *Free Disputation* see Gribben, ‘Samuel Rutherford’, 355-73 and Coffey, *Politics*, 211-19.
- ⁶⁷ For the importance of Arminianism in shaping Rutherford’s theology see especially Richard, *The Supremacy of God*. For Rutherford’s theological controversy with the Aberdeen Doctors see Burton, ‘Disputing Providence’, 121-42. It is important to realise that Rutherford viewed the Doctors as Arminian in their theology, so that in his mind his opponents were linked.
- ⁶⁸ For Rutherford’s discussion of Arminianism and libertinism see, for example, Rutherford, *Free Disputation*, 122-38. Following Rutherford’s death his impressive *Examen Arminianismi* (Utrecht, 1668), one of the most thorough critiques of Arminian theology ever written, was published posthumously by Matthias Nethenus. Coffey, ‘Puritanism and Liberty Revisited’, 971 rightly cautions about linking tolerationism too closely to Arminianism, but this was not Rutherford’s view.
- ⁶⁹ De Freitas and Raath, ‘Rutherford and the Protection of Religious Freedom’, 237 make the important point that for Rutherford ‘opposition to toleration was in fact opposition to skepticism in truth’.
- ⁷⁰ Rutherford, *Free Disputation*, 1-2.

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- ⁷¹ Stanton, 'Natural Law', 45-6.
- ⁷² Rutherford, *Free Disputation*, 3.
- ⁷³ Rutherford, *Free Disputation*, 4-5.
- ⁷⁴ Langston, *Conscience and Other Virtues*, 53-8 points out the proximity between Aquinas and Scotus on this issue. Rutherford seems to come closer to Scotus' Franciscan position that conscience itself is a dynamic power of the soul, whereas applied conscience is a habit.
- ⁷⁵ Rutherford, *Free Disputation*, 3. This likely reflects a Scotist position.
- ⁷⁶ Rutherford, *Free Disputation*, 6. Gellera, 'Christian Tolerance and Tolerance of the Christians' points to a similar notion in James Dundas, perhaps derived from Rutherford.
- ⁷⁷ Stanton, 'Natural Law', 46.
- ⁷⁸ Rutherford, *Free Disputation*, 4-5, 9.
- ⁷⁹ Rutherford, *Free Disputation*, 'To the Reader'.
- ⁸⁰ Rutherford, *Free Disputation*, 39-40.
- ⁸¹ For Locke's changing view see Stanton, 'Natural Law', 40-6.
- ⁸² Rutherford, *Free Disputation*, 6-7. Once again this is a vital distinction from Locke.
- ⁸³ Rutherford, *Free Disputation*, 2.
- ⁸⁴ Rutherford, *Free Disputation*, 1-2.
- ⁸⁵ Rutherford, *Free Disputation*, 23.
- ⁸⁶ Rutherford, *Free Disputation*, 24-5, 28. For this famous decree see Tanner's *Decrees*, 407-10. Rutherford emphasises more the scriptural dimension of this authority. This is in accord with Rutherford, *Due Right*, 373-4 where he distinguishes the act of the Holy Spirit in inspiring Scripture and the act of the Holy Spirit in synods.
- ⁸⁷ Rutherford, *Free Disputation*, 24-7.
- ⁸⁸ For discussion of this movement see, for example, Batten, *John Dury*; Mandelbrote, 'John Dury and the Practice of Irenicism', 41-58; and Milton, 'The Unchanged Peacemaker?', 95-117.
- ⁸⁹ For a discussion of the theology of this movement and its link to broader irenical trends see Burton, 'Heavenly Pattern', 53-75.
- ⁹⁰ See Denlinger, 'The Aberdeen Doctors'.
- ⁹¹ For Dury's connections with Baxter see Mandelbrote, 'John Dury', 53-4.
- ⁹² Rutherford, *Free Disputation*, 60, 67.
- ⁹³ See Dury, *Peacemaker*, 46-55 for a discussion of the importance of association in the Church and synods.
- ⁹⁴ Rutherford, *Free Disputation*, 67-8.
- ⁹⁵ Rutherford, *Free Disputation*, 64.
- ⁹⁶ Rutherford, *Free Disputation*, 25. These he referred to as 'secondary rules of faith'.
- ⁹⁷ Rutherford, *Free Disputation*, 46-7.
- ⁹⁸ Cited from Coffey, *Politics*, 214.
- ⁹⁹ Locke, *Letter*, 7.
- ¹⁰⁰ For Locke's views see Stanton, 'Natural Law', 38-9, 47-8. For Rutherford's response to the Aberdeen Doctors see Samuel Rutherford, 'A Dispute Touching Scandal and Christian Liberty', 1-60, in *Divine Right*. For the Aberdeen Doctors' view on *adiaphora* see Denlinger, 'The Aberdeen Doctors'.
- ¹⁰¹ Rutherford, 'Dispute', 12.
- ¹⁰² Rutherford, *Free Disputation*, 50.
- ¹⁰³ Locke, *Letter*, 6-9.
- ¹⁰⁴ Locke, *Letter*, 9.
- ¹⁰⁵ Rutherford, *Free Disputation*, 50-3.
- ¹⁰⁶ Locke, *Letter*, 36-9. Here Locke denies that the magistrate exists to punish false worship or idolatry.

¹⁰⁷ Locke, *Letter*, 9 defined Church as ‘a voluntary society of Men’. Coffey, ‘Puritanism and Liberty Revisited’, 961-85 shows how these ideas were anticipated in the Puritan Revolution in the revival of the New Testament model of the Church as a ‘purely voluntary, non-coercive society’ (p. 961).

¹⁰⁸ Rutherford, *Lex Rex*, 3-4.

¹⁰⁹ Rutherford, *Free Disputation*, 10.

¹¹⁰ In this light de Freitas and Raath, ‘Rutherford and the Protection of Religious Freedom’, 231-48 make the important point that Rutherford was seeking to protect Presbyterian religious freedom at a time when it was increasingly under threat from the Independents.

¹¹¹ Rutherford, *Free Disputation*, ‘To the Reader’.

¹¹² Milton, ‘On the New Forcers of Conscience under the Long Parliament’; in *Poetical Works*, 342-3; cf. Gribben, ‘Samuel Rutherford’, 361. This poem is explicitly directed against Rutherford and the other Parliamentary ‘forcers of conscience’.